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February 22, 1993

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FEB 22 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: MM Docket No. 92-259
Ex Parte Presentation
**Two Copies Being Simultaneously Filed
With the Secretary of the Commission**

Dear Ms. Searcy

Enclosed are two copies of a letter of this date to the
Honorable James H. Quello, Chairman.

Very truly yours,


Roy F. Perkins, Jr.

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Honorable James H. Quello
Chairman, Federal Communications Commission
1919 M Street, N. W.
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C
Dear Mr. Chairman

First and foremost, my congratulations on your appointment as interim Chairman.

O
I read with interest your keynote remarks at the seminar at the Fordham University School of Law on February 18, 1993. Permit me to comment briefly on one of your remarks concerning the "must-carry" and retransmission consent features of the 1992 Cable Act which, in my view, reflects a commonly-held misperception of that legislation. You stated the following (text of your remarks, page 8, 1st para.):

P
[R]ights to must-carry or retransmission consent apply to stations based on the ADI to which they are assigned and not, as formerly, based on a 35 and 55 mileage zone surrounding each station.

P
I must most respectfully submit that the foregoing (which undoubtedly is the common perception of the effect of the "must-carry" and retransmission consent provisions of the 1992 Cable Act) is oversimplification and misleading.

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The 1992 Cable Act applies "must-carry" (and retransmission consent) to "local commercial television station[s]". Those rights, however, are subject to exceptions, one of which is major. It reads as follows (Sec. 614(h)((B) of the Communications Act, as enacted in Section 4 of the 1992 Cable Act):

(B) EXCLUSIONS. -- The term "local commercial television station" shall not include --

* * * * *

Honorable James H, Quello
February 22, 1993

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(ii) a television broadcast station that would be considered a distant signal under section 111 of title 17, United States Code, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system * * *

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Apart from cases where television stations have acquired "significantly viewed" status beyond their zones, copyright liability is based on the 35 mile and 55 mile zones. Within those zones, copyright liability for cable carriage does not attach; beyond them it does. Accordingly, unless stations agree to pay the copyright fees to be incurred, pursuant to the law as quoted above, television stations which have not achieved "significantly viewed" status will not have carriage (or retransmission consent) rights beyond the 35 and 55 mile (as applicable) zone. If the ADI is larger or more extensive in some direction than the zone (which it frequently is), then the zone will control.

Of course, a television station can pay the copyright liability which cable carriage of its programming would incur, and thereby obtain "must-carry" status. However, in the main this will apply to small-market stations, usually struggling UHF stations, and is not likely to be a viable option in most cases. It is, in addition, egregiously unfair because this new, special burden generally will fall on small-market, non-network stations least likely to be able to afford it.

The foregoing means that the up-dating of the definitions of the major television markets (Sec. 76.51 of the Commission's Rules), as proposed in MM Docket No. 92-259 (Notice of Proposed Rule Making, Broadcast Signal Carriage Issues, paras. 21-3), especially the markets where hyphenated definitions are needed to afford recognition to stations which have commenced operation since Section 76.51 was adopted, assumes importance.

It is not my purpose in this letter to urge any particular action. The views of the client whom I represent in these matters, Triplett & Associates, Inc., Debtor-in-Possession, have been fully set forth in comments filed on its behalf in MM Docket No. 92-259.

Very truly yours,

Roy F. Perkins, Jr.